Neutral Citation Number: [2025] EWHC 123 (Admin)

Case No: AC-2023-LON-003861

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2025

Before

MR JUSTICE SWIFT

- -

Between

DR RINKU SENGUPTA

Claimant

-and-

THE GENERAL MEDICAL COUNCIL

Defendant

- -
- -

Dr Rinku Sengupta (Appeared in person**)**
Benjamin Tankel (instructed by **GMC Legal Department**) for the **General Medical Council**

Hearing dates: 9 October 2024 and 6 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on 27 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT

A. Introduction

1. On 10 March 2010 the Fitness to Practise Panel of the General Medical Council directed that Dr Rinku Sengupta's name be erased from the register of medical practitioners. That decision was taken in exercise of the panel's power under section 35D of the Medical Act 1983 ("the 1983 Act"), and rested on a conclusion that Dr Sengupta's fitness to practise was impaired. The decision to erase Dr Sengupta's name from the register rested on two specific conclusions. The first was that she had acted dishonestly. When Dr Sengupta had applied for a position at the Birmingham Women's Healthcare NHS Trust in 2007, she had provided incomplete and misleading information about her training and the assessment of her abilities. Further, in 2009 Dr Sengupta had taken credit for work undertaken by another doctor on a case report submitted to the Journal of Obstetrics and Gynaecologists. The second conclusion was that Dr Sengupta's standard of performance was unacceptably low. In 2008 an assessment rated her performance in respect of treatment of patients as "unacceptable". Both her performance in practical skills and her overall performance were also considered "unacceptable". In 2009 the Wales Deanery Assessment Panel concluded that Dr Sengupta was not suitable to continue training. This was notwithstanding that Dr Sengupta had been in practice for 13 years and that during that time she had undertaken significant amounts of training.

2. Section 41 of the 1983 Act permits a person whose name has been erased from the register to apply to the Medical Practitioners Tribunal ("the MPT" or "the Tribunal") for a direction that her name be restored to the register. By section 41(6) of the 1983 Act, on consideration of a restoration application the MPT is required to refuse the application unless it is satisfied of the applicant's fitness to practise. Various conditions apply to the ability to make a restoration application. The first condition is that no restoration application may be made before 5 years has passed since the practitioner's name was erased from the register. Dr Sengupta made a restoration application in 2015. The application was heard by MPT on 27 and 28 October 2015 and was refused. Once a restoration application has been refused, no further application be made within 12 months: see section 41(2)(b) of the 1983 Act. Dr Sengupta made a second restoration application in 2018. That application was considered by the MPT on 30 and 31 July 2018 and was also refused.

3. Section 41(9) of the 1983 Act provides as follows.

> "(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely."

Thus, if a second or further restoration application is made and refused the MPT has the power to suspend the applicant's right to make further restoration applications ("a suspension decision"). When a direction under section 41(9) has been made no further restoration application may be made. The only course remaining to the person affected is to apply to the MPT to review the suspension decision. No such application may be made within 3 years of the suspension decision. If such an application is made and refused no further application may be made for 3 years. See section 41(11) of the 1993 Act.

4. In 2018, having refused Dr Sengupta's restoration application, the MPT considered whether to make a suspension direction. It decided not to do so. The MPT's reasons were as follows.

> "8. The Tribunal noted that Dr Sengupta's first application for restoration was made in 2015, some 3 years ago, it also noted that she made efforts to present additional evidence to this Tribunal beyond that which was available to the 2015 Tribunal. There is no suggestion that she has made her application for restoration frivolously, or with the intention of abusing the system of professional regulation.
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> 9. The Tribunal also noted that Dr Sengupta has at no time during this hearing, sought to go behind the findings that were made against her by the 2010 Panel, although this Tribunal was not satisfied that her progress in addressing the issues raised by the 2010 Panel and the 2015 Panel had been sufficiently addressed to enable it to grant her application for restoration.
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> 10. The Tribunal has not been satisfied that Dr Sengupta has addressed her clinical deficiencies, but it acknowledges these are matters that are capable of being remedied. Furthermore, although it expressed concerns regarding her insight and remediation into her misconduct, it accepted that her misconduct is remediable.
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> 11. The Tribunal recognised that Dr Sengupta's continued erasure, which could only be removed by a successful restoration application, sufficiently protects the public.
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> 12. The Tribunal has considered all the circumstances of this case and has balanced Dr Sengupta's interests with the overarching objective. It has determined that it is not proportionate or necessary to suspend indefinitely her right to make further applications for restoration."

5. In 2021 Dr Sengupta made a third restoration application. The hearing took place on 15 and 16 July 2021 and 16 December 2021. The MPT gave its decision on 21 January 2022. The restoration application was refused. The MPT considered Dr Sengupta's deficient professional performance and what it referred to as "misconduct" i.e., Dr Sengupta's dishonest behaviour. As to professional performance the Tribunal stated.

> "63. However, in terms of the application of that knowledge and Dr Sengupta's physical and practical skills, the Tribunal was provided with very limited evidence to reassure it that Dr Sengupta would be competent at a practical level at applying her academic knowledge in a clinical setting. It considered that the practical activities she has undertaken on models or simulators was to her credit, but insufficient to address the performance issues identified. This view is supported by the evidence of Mrs Raghavan and Dr Sengupta herself that she would require direct supervision on a return to practice."

The MPT continued that although it "accepted that Dr Sengupta's efforts had addressed the concerns of the 2018 Tribunal that she was not committed to remediating … it found that significant concerns remain in respect of her performance". The Tribunal concluded it could not be assured that Dr Sengupta "is safe to practise and is no longer a risk to patients". As to the matter of dishonesty the Tribunal concluded.

> "78. The Tribunal found that Dr Sengupta now accepts that her episodes of dishonesty are her responsibility alone and she cannot blame others. The Tribunal found that this represented a step forward in insight and deserved to be acknowledged. Nevertheless, it was insufficient to persuade it that Dr Sengupta is unlikely to be dishonest in future. Given that the dishonesty was persistent and repeated, even after Dr Sengupta attended a professional ethics course, the current evidence fails to efficiently demonstrate that she has fully understood her dishonesty and put that dishonesty behind her.
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> 79. In light of these concerns and apparent contradictions, the Tribunal found that a significant risk of repetition remains. It considered it highly unlikely that Dr Sengupta would repeat the exact behaviour and be dishonest about the same issues but remains a significant risk of further dishonesty if other stressful situations arise."

6. This time the MPT went on to make a suspension decision. The MPT's reasons were as follows.

> "8. In reaching its decision, the Tribunal has taken account of all the evidence before it before it, both oral and documentary.

> The Tribunal has already given a detailed determination on the application for restoration in this case and it has taken those matters into this account in this stage of the proceedings. The Tribunal has taken account of the submissions made by Mr Taylor, on behalf of the GMC, and those made by Dr Sengupta. The Tribunal had sight of the of the section E of the Guidance, as referenced in Mr Taylor's submission. …
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> 9. Throughout its deliberations, the Tribunal has been mindful of the of the overarching objective of the GMC as set out in the Medical Act 1983 (as amended).
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> 10. The Tribunal bore in mind its determination on Dr Sengupta's application for restoration to the Register. This determination should be read in conjunction with the detailed finding set out in it.
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> 11. The Tribunal does not accept Dr Sengupta's interpretation of the decision of the 2018 Tribunal which identified risk of repetition.
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> 12. The Tribunal reminded itself that this was Dr Sengupta's third application for restoration and had regard to the passage time set out in detail in its determination.
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> 13. With regard to Dr Sengupta's misconduct the Tribunal reminded itself that it had already found that she had not developed full insight despite the passage of time.
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> 14. With regard to Dr Sengupta's clinical performance, the Tribunal had regard to its findings that, despite the passage of time, she not remediated these and that the prospect of her being able to do so was now greatly reduced.
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> 15. The Tribunal concluded that in all the circumstances, it was not in the public interest to allow Dr Sengupta to make another application with so little prospect of success.
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> 16. Accordingly, the Tribunal decided to suspend indefinitely Dr Sengupta's right to re-apply for restoration. The Tribunal noted that Dr Sengupta is entitled to apply to the Registrar to lift that suspension after 3 years."

7. Dr Sengupta challenged both the restoration decision and the suspension decision. That challenge was heard by Linden J on 10 May 2023. In a judgment handed down on 31 May 2023 ([2023] EWHC 1302 (Admin)), Linden J dismissed Dr Sengupta's challenge to the restoration decision. However, Dr Sengupta's appeal against the suspension decision succeeded. Linden J concluded that the MPT had erred in relying on emails sent by Dr Sengupta to a Dr Gee in November 2017 as evidence of dishonesty. These emails had previously been considered by the MPT in the 2018

restoration application and had been characterised by that panel of the MPT as "intemperate" rather than as an attempt to mislead (and as such, dishonest acts). Linden J further concluded that at the hearing on 21 January 2022, when the decision on the restoration application had been issued, the MPT had failed to comply with rule 24 of the Fitness to Practise Rules. Rule 24(2)(i) provides as follows.

> "(i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration under section 41(9) of the Act, the Medical Practitioners Tribunal shall–
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> (i) consider any representations made and evidence received, and
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> (ii) where the applicant is present, invite further representations and evidence from him specifically upon this issue."

Linden J concluded that the MPT had not given Dr Sengupta the opportunity to provide further representations and evidence as required by subparagraph (ii). In the premises, Linden J quashed the suspension decision and remitted the matter to the MPT. The material part of Linden J's order was as follows.

> "(4) The question whether an order under section 41(9) of the Medical Act 1983 should be made will be remitted to the Medical Practitioners' Tribunal Service for reconsideration by a differently constituted MPT.
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> (5) At the remitted hearing
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> a. The MPT findings in the Restoration decision shall stand, save for the findings of dishonesty in relation to the Appellant's emails to Dr Gee in 2017/2018 and the conclusions about her honesty which are based on those findings.
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> b. The MPT shall proceed on the basis of the findings of the 2018 MPT in relation to these emails."

8. The remitted hearing took place on 30 and 31 October 2023, and 1 December 2023. Dr Sengupta was present for the first two days of the hearing but not the third. The submission made by the GMC was that a suspension decision should be made because: 14 years passed since the erasure decision; although in that time Dr Sengupta had made three restoration applications each had failed; she had not yet remediated her misconduct; and there was little prospect that for the foreseeable future she would. The GMC contended that to permit further restoration applications to be made would tend to undermine public confidence in the medical profession and its regulation.

9. The MPT's reasoning (from paragraph 19 of its written decision) may be summarised as follows. (1) The Tribunal noted that a significant part of Dr Sengupta's evidence and submissions "related to remediation and insight issues", but "restricted its discussions to whether Dr Sengupta should have a further opportunity to apply for restoration notwithstanding the three restoration applications she had already made". (2) The Tribunal concluded that Dr Sengupta had "attempted to minimise her clinical deficiencies, blaming others for her clinical shortcomings" and, for that reason had not "taken responsibility for her own actions". (3) The Tribunal concluded there was no evidence that since the decision in 2022 to reject the third restoration application Dr Sengupta had taken steps to remediate her clinical skills. (4) The Tribunal concluded that Dr Sengupta "lacked sufficient insight into her deficient clinical skills". The MPT's reasons continued at paragraphs 25 and 27 as follows.

> "25. … The Tribunal recognised that Dr Sengupta had had the benefit of three previous restoration hearings in order to be able to formulate her submissions and that her level of insight has increased over time by previous reviewing tribunals. However, it took the view that her written submissions, reportedly reflecting meaningful insight into her failings were inconsistent with her oral submissions made to the Tribunal during the course of this hearing. As such, the Tribunal concluded that there remained ongoing concerns regarding her insight into her dishonest behaviour. In those circumstances, it concluded that there remained an ongoing risk of her misconduct being repeated if being put in … similar stressful situations, which a medical practitioner would undoubtedly routinely face.
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> …
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> 27. The Tribunal considered if the overarching objective [section 1 of the 1983 Act] would be met if it allowed Dr Sengupta to further re-apply for restoration. It bore in mind the passage of time since the concerns were raised regarding Dr Sengupta's clinical skills and that these have still not been remediated. It has also borne in mind that there remains a repetition of misconduct to the incomplete insight Dr Sengupta continues to demonstrate, some 13 years after her initial erasure from the medical register. In those circumstances, the Tribunal concluded that none of the limbs of the over-arching objective would be met by allowing Dr Sengupta to make another fourth, application for restoration where there was little prospect for success."

10. Although at the time of the 2018 restoration application, the MPT had formed the view that Dr Sengupta had made some progress towards addressing the conduct that had resulted in erasure and was satisfied that her clinical deficiencies remained capable of being remediated, by 2022 the MPT had formed a different conclusion.

B. The appeal

11. By section 40(1)(b) of the 1983 Act, a suspension decision is an appealable decision. The powers of the court on an appeal are listed in section 40(7): an appeal may be allowed or dismissed; the court may substitute for the decision of the MPT any decision that the MPT could have made; and the court may remit the case to the MPT. The nature of appeals under section 40 of the 1983 Act is well-established. CPR 52, Practice Direction 52D, paragraph 19 provides that appeals under section 40 of the 1983 Act are appeals by way of rehearing. What that means has been considered in several cases, all summarised in the judgment of the Court of Appeal in *Sastry v General Medical Council* [2021] EWCA Civ 62: see the judgment of the court at paragraphs 19 to 39. I will not attempt to repeat that summary in this judgment and, in any event, it would be unnecessary to do so.

12. In this appeal, Dr Sengupta invited me to consider evidence of matters that post-dated the MPT suspension decision of 1 December 2023. I declined to have regard to that material. The appeal is by way of re-hearing of the case that was heard by MPT. It is not the hearing of a different case based on evidence that the MPT did not and could not have considered.

13. Dr Sengupta pursues four grounds of appeal. Each ground is wide-ranging and many aspects of the different grounds merge into each other. The first ground is that there were "serious procedural irregularities". The primary contention is that the Tribunal failed to conduct the hearing in accordance with the conclusions reached by Linden J and his directions. Dr Sengupta contends that the Tribunal was wrong to admit new evidence, being: (a) emails passing between her and Dr Gee in 2017 (which were the emails that had been referred to in both the 2018 and 2022 restoration application hearings but not previously produced in those hearings); and (b) emails between Dr Sengupta and the GMC in 2023 in which, it was said, Dr Sengupta had accepted inaccuracies in the information she had included in support of her application for restoration that was considered in 2022. The second ground of appeal is that the suspension decision was "wrong". Dr Sengupta contends that the Tribunal's evaluation of the evidence concerning poor performance and dishonesty was erroneous and perverse. The third ground of appeal is closely linked. Dr Sengupta submits that the relevant poor performance concerned surgical skills and that any requirement for complete remediation of this failing was erroneous, and the Tribunal ought to have been satisfied that there was evidence of continuing remediation albeit that further improvement was still required. The fourth ground of appeal is directed to the conclusion at paragraph 25 of the decision that there were inconsistencies between Dr Sengupta's written and oral submissions that warranted "ongoing concerns regarding her insight into her dishonest behaviour".

C. Decision

14. The circumstances in which the 2023 suspension decision came to be taken resulted in complications which although unintended, were significant. In ordinary circumstances, consideration of whether to exercise the power at section 41(9) of the 1983 Act to suspend the right to make further restoration applications takes place in the immediate aftermath of a decision refusing an application for restoration. The reasons for the restoration decision will underpin consideration of whether to suspend the doctor's opportunity to make further restoration applications. The further

submissions anticipated by Rule 24(2)(i) of the GMC's Fitness to Practise Rules (at Schedule 1 to the General Medical Council (Fitness to Practise) Rules Order in Council 2024), would not concern matters relevant to the restoration application. Those matters would already have been the subject of adjudication by the Tribunal. Instead, the representations would only concern the possible exercise of the section 41(9) power to make a suspension decision.

15. Section 41(9) of the 1983 Act does not specify the matters that are relevant to exercise of the power to suspend. Nor are such matters addressed in the Fitness to Practise Rules, or in any guidance issued either under the 1983 Act or otherwise for the purposes of informing Tribunals on the approach to take. However, what needs to be considered is whether any sufficient reason exists to prevent the practitioner making further restoration applications without the requirement for prior permission in section 41(11) of the 1983 Act. Various matters could, in principle, be relevant. For example, the past conduct of the practitioner when making restoration applications under section 41(2). Have such applications as have been made, been without merit (i.e. not just applications that have turned out to be unsuccessful, but ones that had little or no reasonable prospect of success from the outset)? Has the practitioner conducted herself unreasonably when pursuing restoration applications? Whether, taking account of all circumstances, such as the reasons for the erasure decision, events since that decision, or the general passage of time, there is any reasonable prospect that future restoration applications succeed? This is not intended to be an exhaustive list. No doubt, depending on the circumstances of the case, other matters may be relevant to a decision under section 41(9) of the 1983 Act. Further, the weight attaching to any matter will also be sensitive to circumstances. Nevertheless, considerations of this type are better likely to guide a Tribunal to a correct application of the power at section 41(9) of the 1983 Act than mere and unparticularised resort to the overarching objective at section 1 of the 1983 Act.

16. In the present case at paragraph 27 of its decision, the Tribunal referred only to the section 1 overarching objective. While the matters specified in that objective are, by section 1 of the 1983 Act, always relevant as they identify the purposes for which the powers under the 1983 Act should be exercised, resort to the overarching objective is no substitute for careful reflection on the specific reason why the section 41(9) power exists. Mere recitation of the overarching objective will not provide a sufficient guide to the use of the section 41(9) power.

17. Be that as it may, when exercise of the power at section 41(9) of the 1983 Act is considered immediately following a decision on a restoration application, the process of addressing these matters will start from the Tribunal's conclusions on that application and the representations made on the suspension application will not entail any re-run or revisitation of matters decided already in the course of the restoration decision.

18. In the present case the position was complicated by the passage of time between the decision on the restoration application in January 2022 and the hearing of the section 41(9) application in October and December 2023. The Tribunal could not proceed based on the conclusions reached in the 2022 restoration decision alone but had also to consider further evidence advanced by Dr Sengupta as to the steps she had taken in the 20 or so intervening months. The unintended consequence of the detachment in

time between consideration of the power to suspend and the decision on the restoration application was that the application heard in October and December 2023 came to have the look of a re-run or review of the restoration decision. It is the need to undertake that exercise, the consideration of events occurring between January 2022 and October 2023, that has given rise to the bulk of the complaints that Dr Sengupta now raises.

19. Notwithstanding Dr Sengupta's wide-ranging grounds of appeal and submissions, I consider that the outcome of the appeal turns on one part of the Tribunal's reasoning. At paragraph 24 of its decision the Tribunal considered the professional performance issue. On this issue the Tribunal's view was that the conclusion reached by the January 2022 Tribunal continued to hold good and that the evidence of matters occurring since that time did not suggest any improvement in Dr Sengupta's practical surgical skills. The Tribunal used the language of "clinical" performance and skills, and Dr Sengupta takes issue with the reference to "clinical" rather than "surgical". However, on the facts of this case that is a distinction without a difference. The 2022 restoration decision referred to "deficient clinical performance" meaning Dr Sengupta's lack of ability to apply theoretical knowledge in a clinical setting. I am satisfied that at paragraph 24 of the 2023 suspension decision, the Tribunal is referring to the same matter. I do not consider there is any basis on which the Tribunal's conclusion at paragraph 24 can be faulted.

20. The problem with the Tribunal's reasoning arises from paragraph 25 of the decision. There, the Tribunal considered the other matter that had led to the 2010 erasure decision – the finding of dishonesty. On this point the Tribunal concluded that "there remained on going concerns regarding [Dr Sengupta's] insight into her dishonest behaviour" because of inconsistencies between Dr Sengupta's written submissions and what she said to the Tribunal at the hearing. For that reason, the Tribunal concluded there was "an ongoing risk" that Dr Sengupta would act dishonestly again when facing a stressful situation. This conclusion was material. The Tribunal referred to it again at paragraph 27 of its decision; it was one of the matters supporting the Tribunal's overall conclusion to make a suspension order. The difficulty with the conclusion at paragraph 25 is that the Tribunal failed to identify the inconsistencies. Mr Tankel, who appears for the General Medical Council, describes Dr Sengupta's submissions and their structure as idiosyncratic, meaning it is often difficult to follow the line of argument that is being pursued. There is something to be said for that, and it may provide some explanation why at this remove, notwithstanding that Dr Sengupta's written submissions are available, and notwithstanding the record of proceedings before the Tribunal, it is not possible to identify the inconsistencies that the Tribunal identified and relied on.

21. The Tribunal's failure properly to reason its decision is a material error amounting to a serious irregularity for the purpose of this court's powers under CPR 51.21(3). For this reason, and without the need to consider Dr Sengupta's more detailed submissions on her grounds of appeal, the Tribunal's suspension decision should be quashed.

22. There remains the question of what should happen next; whether the exercise of the section 41(9) power should again be remitted to the Tribunal. I have decided this should not happen. The matter that complicated the Tribunal's task in 2023 was the

passage of time since the decision to dismiss the restoration application of January 2022. Were the section 41(9) decision to be remitted again that complication would be all the greater. Given the passage of time since Dr Sengupta's last restoration application, the better course is that the suspension order should be quashed but no further action should be taken. Should Dr Sengupta, in the future, decide to make a further restoration application and should that application fail, the Tribunal will at that time be able to consider whether to make a suspension order.

23. For sake of clarity, nothing in this judgment should be understood as any criticism of the decision made in January 2022 to refuse Dr Sengupta's restoration application. Like Linden J, I am entirely satisfied that decision was properly made and was correct.